



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

STEPHEN E EARLE, MD
PO BOX 32577
SAN ANTONIO TEXAS 78265

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

Respondent Name

LIBERTY INSURANCE CORP

Carrier's Austin Representative Box

Box Number 01

MFDR Tracking Number

M4-08-5763-01

MFDR Date Received

May 13, 2008

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "...The health care concern surgical procedure dated October 1, 2007, include code 20938, harvesting and preparation of bone graft; code 22899, examination under anesthesia and pain study; code 69990, microdissection technique; code 63402, revision lumbar spine surgery, L4-L5... Each one of these codes was preauthorized and cannot be denied by medical necessity per TDI-DWCC [sic] Guidelines... These codes were performed according to the standard of care for operative procedure. They are found in a CPT codebook. These codes were preauthorized and medical fee guideline charges at 125% of Medicare were made. The disputed fee issues regarding preauthorization of codes and non-funding..."

Amount in Dispute: \$1,492.66

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: The insurance carrier was notified of the DWC060 request, via the carrier representative box 28, assigned to Liberty Insurance. The DWC060 packet was picked up and signed for by the insurance carrier representative on May 19, 2008. No response to the DWC060 was submitted. The division will therefore issue a decision on the disputed issues with the information presented before Medical Fee Dispute Resolution.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 1, 2007	20938, 22899, 63042 and 69990-59	\$1,492.66	\$861.13

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.202 sets out the fee guidelines for professional services provided between August 1, 2003 and March 1, 2008.

3. Division rule at 28 TAC §134.1, effective May 16, 2002, requires that services not identified in a fee guideline shall be reimbursed at fair and reasonable rates.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits for date of service October 1, 2007

- CPT code 69990-59
B291 – This is a bundled or on covered procedure based on Medicare Guidelines; no separate payment allowed.
Z121 – Level II certified provider
- CPT code 20938
X901 – Documentation does not support level of service billed
Z121 – Level II certified provider
- CPT code 28899
X901 – Documentation does not support level of service billed
Z121 – Level II certified provider
- CPT code 63042-50
Z710 – The charge for this procedure exceeds the fee schedule allowance
U849 – This multiple procedure was reduced 50% according to fee schedule or usual and customary guidelines.
Z121 – Level II certified provider

Issues

1. Did the requestor submit documentation to support fair and reasonable reimbursement for CPT code 28899?
2. Did the requestor bill for unbundled services?
3. Did the requestor submit documentation to support that the services rendered were billed?
4. Is the requestor entitled to reimbursement?

Findings

1. The requestor seeks reimbursement for professional services rendered in a facility. Therefore, the disputed charges will be reviewed under the provisions of 28 Texas Administrative Code §134.202.
2. Per 28 Texas Administrative Code §134.202 “(c) To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: (1) for service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Surgery, Radiology, and Pathology the conversion factor to be used for determining reimbursement in the Texas workers' compensation system is the effective conversion factor adopted by CMS multiplied by 125%. For Anesthesiology services, the same conversion factor shall be used. (2) for Healthcare Common Procedure Coding System (HCPCS) Level II codes A, E, J, K, and L: (A) 125% of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule. (B) if the code has no published Medicare rate, 125% of the published Texas Medicaid Fee Schedule Durable Medical Equipment/Medical Supplies Report J, for HCPCS; or (C) if neither paragraph (2)(A) nor (2)(B) of this section apply, then as calculated according to paragraph (6) of this subsection.
 - The requestor seeks reimbursement for CPT code 22899.
 - CPT code 22899 is defined as “Unlisted procedure, spine.”
 - Review of the Medicare Fee schedule does not value CPT code 22899; therefore reimbursement is subject to Rule 134.1.

Per 28 Texas Administrative Code §134.202 “(c) To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: (6) for products and services for which CMS or the commission does not establish a relative value unit and/or a payment amount the carrier shall assign a relative value, which may be based on nationally recognized published relative value studies, published commission medical dispute decisions, and values assigned for services involving similar work and resource commitments.”

Division rule at 28 TAC §134.1 requires that “Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission.”

Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

Former 28 Texas Administrative Code §133.307(g)(3)(D), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that:

- The CPT code 22899 does not have a Medicare assigned value.
 - Division rule at 28 TAC §134.1, effective May 16, 2002 requires that services not identified in a fee guideline shall be reimbursed at fair and reasonable rates.
 - The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
 - The requestor did not submit nationally recognized published studies or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
 - The requestor did not support that the requested alternative reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.
3. Per 28 Texas Administrative Code §134.202 "(b) For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section." CCI edits were run to determine if edit conflicts exists. Review of the documentation finds:
- CCI Edit - Procedure 22612 and component procedure 69990 are unbundled. A modifier is not allowed. Reimbursement is therefore not recommended for CPT code 69990.
 - No CCI edit conflicts were identified for CPT codes 20938 and 63042. These charges will be reviewed according to the applicable fee guidelines.
4. Per 28 Texas Administrative Code §134.202 "(b) For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section." Review of the documentation finds that:
- CPT code 20938 is defined as "Autograft for spine surgery only (includes harvesting the graft); structural, bicortical or tricortical (through separate skin or fascial incision) (List separately in addition to code for primary procedure)."
 - CPT code 63042 is defined as "Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disc, reexploration, single interspace; lumbar."
 - The requestor submitted documentation to support the billing of the disputed services. Reimbursement is therefore recommended according to 28 Texas Administrative Code §134.202. The requestor billed with place of service 22 indicating facility charges. The requestor is therefore entitled to facility reimbursement for professional services.
 - CPT code 20938. The Medicare reimbursement is $\$178.49 \times 125\% = \text{MAR } \223.11 . The requestor seeks reimbursement in the amount of $\$121.88$. This amount is recommended.
 - CPT code 63042. The Medicare reimbursement is $\$1,182.80 \times 125\% = \text{MAR } \$1,478.50$. The multiple procedure rules applies, 50% of the MAR amount is recommended $\$739.25$. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$861.13.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$861.13 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____	_____	_____
Signature	Medical Fee Dispute Resolution Officer	April 22, 2013 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.